

## **ORDINANCE**

**AN ORDINANCE AMENDING ARTICLE II “FIRE DEPARTMENT” OF CHAPTER 38, "FIRE PREVENTION AND PROTECTION," OF THE CODE OF ORDINANCES, CITY OF BURLESON, TEXAS, BY REPEALING AND REPLACING DIVISION 2, "VOLUNTEER FIRE DEPARTMENT" AND DIVISION 3, “FIRE PREVENTION DEPARTMENT,” TO SET FORTH THE GENERAL POWERS OF THE CITY FIRE DEPARTMENT, THE APPOINTMENT OF THE FIRE CHIEF, AND THE QUALIFICATION REQUIREMENTS OF FIREFIGHTERS, CREATING THE FIRE PREVENTION DIVISION AS A DIVISION OF THE FIRE DEPARTMENT, SETTING FORTH THE OFFICE AND DUTIES OF THE FIRE MARSHAL, SETTING FORTH THE DUTIES OF THE FIRE CHIEF, AND SETTING FORTH A CONFLICT OF INTEREST PROVISIONS FOR THE FIRE MARSHAL; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS HEREOF; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Burleson (“City”) is a home rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, Chapter 38, Article II, Division 2 of the Code of Ordinances, City of Burleson, Texas (2005) created the fire department with both volunteer and paid firefighter positions; and

WHEREAS, the City fire department no longer utilizes volunteer firefighters; and

WHEREAS, Chapter 38, Article II, Division 2 of the Code of Ordinances, City of Burleson, Texas set forth that assistant fire chief shall be appointed by the fire chief and ratified by the city manager, and that company officers shall be appointed by the fire chief; and

WHEREAS, the City desires that the appointment of assistant fire chiefs and company officers follow the standard employment procedures of the City; and

WHEREAS, Chapter 38, Article II, Division 3 of the Code of Ordinances, City of Burleson, Texas created the fire prevention department as a department independent of the fire department; and

WHEREAS, the City desires that the fire prevention department be a division of the fire department and that the fire marshal report to the fire chief; and

WHEREAS, the City Council desires to Amend Chapter 38, Article II, Divisions 2 and 3 of the Code of Ordinances, City of Burleson, Texas as set forth herein; and

WHEREAS, the City Council finds and determines that the adoption of this ordinance is necessary and proper and in the best interests of the public health, safety, and general welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, THAT:**

#### SECTION 1.

Chapter 38, "Fire Prevention and Protection," Article II, "Fire Department," of the Code of Ordinances, City of Burleson, Texas (2005) is hereby amended by repealing and replacing Division 2, "Volunteer Fire Department," and Division 3, "Fire Prevention Department," to read as set forth in Exhibit "A," attached hereto and incorporated herein by reference for all purposes.

#### SECTION 2. CUMULATIVE

This ordinance shall be cumulative of all provisions of ordinances and of the Code of Ordinances of the City of Burleson, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event the conflicting provisions of such ordinances and such Code are hereby repealed. This ordinance is consistent with and is not intended to repeal any provision in the zoning ordinance.

#### SECTION 3. SEVERABILITY

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

#### SECTION 4. PENALTY

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than Five Hundred Dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 5.  
SAVINGS PROVISION

All rights and remedies of the City of Burleson are expressly saved as to any and all violations of the provisions of any ordinances concerning outdoor gatherings or Public Events which have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 6.  
PUBLICATION

Pursuant to Section 36 of the Charter of the City of Burleson, that this ordinance shall take effect after its passage and publication, and that the City Secretary is hereby directed to give notice of the passage of this ordinance by causing the caption or title and the penalty clause of this ordinance to be published once in a newspaper of general circulation in the city and on the city's website.

SECTION 7.  
EFFECTIVE DATE

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

**First Reading:**        the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**Final Reading:**        the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**PASSED AND APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Mayor  
City of Burleson, Texas

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Secretary

\_\_\_\_\_  
City Attorney

## **Exhibit “A”**

### **"DIVISION 2. FIRE DEPARTMENT**

#### **Sec. 38-51. General powers and appointment of fire chief**

- (a) The fire chief shall be the head of the city fire department, and the members of the department shall be under the authority, control, and command of the fire chief, the assistant fire chief and the company officers, subject to the Charter and all ordinances of the city and of this article. The fire chief shall be appointed by the city manager or designee.

#### **Sec. 38-52. Firefighting personnel.**

Any qualifications established for the position of a paid firefighter of the city shall meet state requirements for a paid firefighter. The minimum physical, mental, education, and moral standards established by the state commission on fire protection personnel standards and education shall apply to the position of paid firefighter. The requirements set by fire department policy may be stricter than the standards established by such boards or commission.

#### **Secs. 38-53—38-70. Reserved.**

### ***DIVISION 3. FIRE PREVENTION DIVISION***

#### **Sec. 38-71. Fire prevention division created.**

The fire prevention division is hereby created, and the division shall be a part of the fire department. The fire prevention division is established as a law enforcement agency of the city for the purpose of making investigations, and enforcing state laws and city ordinances concerning fire prevention and investigation.

#### **Sec. 38-72. Fire marshal; responsibilities.**

- (a) The administrative official in charge shall be known as the fire marshal.
- (b) The fire marshal shall be the designated agent responsible for the administration and enforcement of the fire code, and responsible for prevention and investigation procedures of the fire code.

#### **Sec. 38-73. Conflicts of interests.**

The fire marshal shall not have any interest whatever, directly or indirectly, in the sale or manufacturing of any material, process or device entering into or used in or in connection with fire prevention, inspection or investigation.

#### **Sec. 38-74. Duties of the fire marshal.**

The fire marshal is hereby authorized and directed to enforce the provisions of the fire code adopted by section 38-191.

**Sec. 38-75. Duties of the fire chief.**

The fire chief shall be responsible for the supervision, direction, and organization of fire suppression and fire prevention, and for establishing rules and regulations as necessary for the operation of the fire department.

**Secs. 38-76-38—90. Reserved.”**